

# EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 AUSTIN DIVISION

4 UMG RECORDINGS, INC., §

5 et al. §

6 §

7 VS. § CIVIL ACTION NUMBER

8 § 1:17-cv-0365-LY

9 GRANDE COMMUNICATIONS §

10 NETWORKS LLC and §

11 PATRIOT MEDIA §

12 CONSULTING, LLC §

13  
14 30(b)(6) Deposition of

15 Grande Communications Networks LLC

16 By and Through its Designated Representative

17 RICHARD N. FOGLE

18 And in His Individual Capacity

19 Austin, Texas

20 June 28, 2018

21 2:44 p.m.

22  
23 Job No.: 193714

24 Pages: 1 - 228

25 Reported by: Micheal A. Johnson, RDR, CRR

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

163

1	MR. HOWENSTINE: Objection, argumentative.	17:39:55
2	MR. O'BEIRNE: It's not argumentative.	17:39:56
3	It's a simple straightforward question.	17:39:58
4	BY MR. O'BEIRNE:	17:40:00
5	Q. Please try to just listen to the question	17:40:00
6	and answer just the question I'm asking you.	17:40:02
7	A. Sure.	17:40:04
8	Q. From the time you started working at	17:40:04
9	Grande until the reorg, you never once reviewed	17:40:06
10	Grande's record retention policy?	17:40:09
11	A. That is correct.	17:40:09
12	Q. All right.	17:40:12
13	A. That I can recall.	17:40:13
14	Q. Again, I'd like to ask you questions about	17:40:20
15	this document and I don't believe there's any	17:40:22
16	good-faith disagreement as to the authenticity of	17:40:23
17	it or what it means. It was produced to us in	17:40:28
18	response to a specific request about the Grande	17:40:30
19	record retention policy in effect at the time.	17:40:33
20	MR. HOWENSTINE: I'm sorry, just -- just	17:40:36
21	so we're clear, how do we know that it was	17:40:39
22	produced in response to a specific request? I'm	17:40:43
23	not saying that it's not, I'm just not sure what	17:40:45
24	you're referring to.	17:40:48
25	MR. O'BEIRNE: We received a ten-PDF	17:40:49

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

164

1 production like a week ago or ten days ago that 17:40:51  
2 was very targeted, I understood to be the result 17:40:53  
3 of cleanup of productions that we were owed but 17:40:56  
4 have yet to happen, and there had been 17:41:00  
5 correspondence where we said, here's the things we 17:41:02  
6 still haven't received, boom, boom, boom, and one 17:41:04  
7 of them was Grande's record retention policy and 17:41:06  
8 then we got this. 17:41:10

9 So I understand this was in effect before 17:41:11  
10 the merger, fine. I'm not talking about after the 17:41:13  
11 merger, I'm talking about before the merger. I 17:41:16  
12 just want to ask the witness questions about it 17:41:19  
13 without there being confusion as to the 17:41:19  
14 authenticity of it, i.e., this is what was 17:41:22  
15 provided to us by Grande as the record retention 17:41:22  
16 policy. So let me just ask of the witness and see 17:41:26  
17 if maybe we can clear it up. 17:41:30

18 BY MR. O'BEIRNE: 17:41:31

19 Q. Sir, do you have any reason to disagree 17:41:31  
20 that this was Grande's record retention policy -- 17:41:34

21 A. I have no reason to disagree. 17:41:36

22 Q. -- prior to the merger? 17:41:38

23 A. I have no reason to disagree. 17:41:39

24 Q. What different record retention policy are 17:41:45  
25 you aware exists after the merger? 17:41:47

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

165

1	A. The one that was penned by RCN.	17:41:53
2	Q. Have you read it?	17:41:57
3	A. I've skimmed it, yes.	17:41:58
4	Q. So you've seen a record retention policy	17:42:01
5	that you believe says, "This is the record	17:42:03
6	retention policy that applies to Grande and RCN"?	17:42:07
7	A. Mergered, yes.	17:42:11
8	Q. Well, there was -- the companies	17:42:13
9	remained -- I mean, they are two separate	17:42:16
10	companies still, right?	17:42:18
11	A. No. We're the same company.	17:42:19
12	Q. Grande has its own policies that aren't	17:42:21
13	also RCN policies, right?	17:42:24
14	A. I don't know. I will tell you that our IT	17:42:27
15	policies, especially around PCI compliance, are	17:42:29
16	merged.	17:42:33
17	Q. I'd like to focus on premerger --	17:42:34
18	A. Sure.	17:42:37
19	Q. -- facts to include ones relating to this	17:42:38
20	record retention policy.	17:42:41
21	A. Sure.	17:42:42
22	Q. So we're probably due for a break in a few	17:42:42
23	minutes. I think it would make sense just to talk	17:42:45
24	about some provisions of the policy and then we'll	17:42:48
25	take a quick break.	17:42:51

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

166

1	A. Okay.	17:42:52
2	Q. So if you'll turn to page 4 of this	17:42:52
3	document, "Executive Summary," it says, "The	17:43:03
4	essential purpose of this document is to define,	17:43:10
5	detail and communicate the policies around record	17:43:12
6	retention for Grande Communications."	17:43:15
7	Do you see that?	17:43:17
8	A. I see this.	17:43:18
9	Q. "This document will serve as the company	17:43:18
10	record retention policy standard."	17:43:23
11	See that?	17:43:25
12	A. I see that.	17:43:25
13	Q. You were aware for the entire time you	17:43:29
14	were a Grande employee prior to the merger, it was	17:43:31
15	your obligation to comply with the company's	17:43:35
16	record retention policy standard?	17:43:38
17	A. I knew I had an obligation to comply with	17:43:40
18	our records -- our standards, yes.	17:43:43
19	Q. To include record retention standards?	17:43:46
20	A. To include record retention standards,	17:43:48
21	yes.	17:43:51
22	Q. And if you wanted to know what those	17:43:51
23	standards were, this is what you would go look at?	17:43:53
24	A. Yes.	17:43:56
25	Q. In fact, the policy lists "Audience. The	17:44:00

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

167

1	intended audience for this document is all Grande	17:44:02
2	employees and its affiliates."	17:44:05
3	A. You are correct.	17:44:07
4	Q. Was RCN an affiliate of Grande --	17:44:08
5	A. No.	17:44:11
6	Q. -- prior to the merger?	17:44:11
7	A. Not that I know of.	17:44:12
8	Q. "Affiliate" and "sister company" mean	17:44:13
9	different things?	17:44:16
10	A. Perhaps to some people.	17:44:17
11	Q. Do they mean different things to you?	17:44:18
12	A. I -- yes.	17:44:22
13	Q. If you turn to page 5.	17:44:24
14	A. Done.	17:44:27
15	Q. It says, "Business Objectives. Grande	17:44:28
16	will use this record retention policy to" -- and	17:44:31
17	then there's starred bullets underneath there. Do	17:44:35
18	you see that?	17:44:39
19	A. I do.	17:44:39
20	Q. And the second bullet is, "Recognize	17:44:39
21	circumstances that impose special document	17:44:43
22	preservation obligations, particularly with	17:44:46
23	regards to any regulatory compliance or litigation	17:44:48
24	hold."	17:44:52
25	See that, sir?	17:44:52

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

168

1	A. Uh-huh.	17:44:53
2	Q. Yes?	17:44:54
3	A. I do.	17:44:54
4	Q. Did you receive a litigation hold in	17:44:55
5	connection with this lawsuit?	17:44:57
6	A. I did not. Our IT manager and Stephanie	17:45:00
7	did.	17:45:04
8	Q. So you became aware of a litigation hold	17:45:08
9	that had been issued to some people, but you were	17:45:10
10	not among them?	17:45:12
11	A. No. I was just informed as the director	17:45:13
12	of the department.	17:45:15
13	Q. Did you preserve all e-mails potentially	17:45:16
14	relevant to this matter once you became aware that	17:45:19
15	a litigation hold had been issued?	17:45:22
16	A. I can't answer that. I would have to make	17:45:31
17	a phone call and research that one.	17:45:34
18	Q. Okay. Part of the business objectives	17:45:41
19	Grande says it will use this record retention	17:45:43
20	policy to achieve is to, "Ensure ongoing	17:45:47
21	compliance with retention and destruction	17:45:49
22	policies."	17:45:52
23	Do you see that?	17:45:52
24	A. I see that.	17:45:53
25	Q. If you could turn to page 6 under "Policy	17:45:54



Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

169

1 Guidelines," the first paragraph states, the last  
2 full sentence, "Data and record management within  
3 a company should be a top priority for corporate  
4 leadership, HR, corporate counsel and the finance  
5 and IT groups."

17:46:00

17:46:11

17:46:14

17:46:17

17:46:21

6 Do you see that, sir?

17:46:22

7 A. I do.

17:46:24

8 Q. You're within the IT group, right?

17:46:24

9 A. At this point in time, IT reported to  
10 Stephanie. I was in charge of development.

17:46:26

17:46:28

11 Q. Where did development fall under? Which  
12 of these groups?

17:46:32

17:46:36

13 A. None of them.

17:46:38

14 Q. Did you not make document -- strike that.

17:46:40

15 Did you not view data and record  
16 management as a top priority because you were not  
17 in corporate leadership, HR, corporate counsel,  
18 finance or IT?

17:46:45

17:46:47

17:46:49

17:46:53

19 A. I can't say whether I did or did not make  
20 data record management a top priority. We didn't  
21 have records to really manage. We did create  
22 data.

17:46:59

17:47:03

17:47:07

17:47:10

23 Q. Just to refresh my recollection, you've  
24 never looked at this document before you and I are  
25 going through it right now, correct?

17:47:15

17:47:18

17:47:20

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

170

1	A. Not that I can recall.	17:47:21
2	Q. It states, "The following guidelines	17:47:23
3	should be adhered to as part of the corporate	17:47:26
4	document/record retention program."	17:47:28
5	Do you see that?	17:47:31
6	A. I do.	17:47:31
7	Q. And again, there's a list of starred	17:47:32
8	bullets. See that?	17:47:34
9	A. I do.	17:47:35
10	Q. About four bullets down, it says, "IT	17:47:36
11	should maintain up-to-date records of all types of	17:47:41
12	hardware/software that are in use for record	17:47:44
13	retention and the locations of all electronic	17:48:11
14	data."	17:47:51
15	See that?	17:47:51
16	A. I do.	17:47:51
17	Q. The next bullet, "Certain events may	17:47:53
18	supersede the record retention policy defined in	17:47:57
19	this document. Document destruction (after the	17:48:01
20	appropriate timeframe) should be ceased at the	17:48:03
21	first notification of a lawsuit."	17:48:06
22	Do you see that?	17:48:09
23	A. I do.	17:48:09
24	Q. "Should be ceased at the first	17:48:12
25	notification" -- strike that.	17:48:14

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

171

1	Should be ceased at the first	17:48:17
2	"anticipation of suit." Do you see that?	17:48:19
3	A. "Anticipation of suit," yes.	17:48:20
4	Q. And should be ceased at the -- at "any	17:48:21
5	indication of impropriety." See that?	17:48:24
6	A. I see that.	17:48:26
7	Q. So you understand that this policy	17:48:27
8	guideline is stating otherwise routine document	17:48:30
9	destruction should be ceased at the first	17:48:33
10	indication of impropriety?	17:48:37
11	A. I see this.	17:48:39
12	Q. Or in anticipation of a suit?	17:48:39
13	A. I see that, yes.	17:48:41
14	Q. It says, "Any and all documentation must	17:48:43
15	be retained for the duration of an investigation	17:48:46
16	and beyond, depending on legal mandates issued	17:48:49
17	during such an investigation."	17:48:52
18	Do you see that?	17:48:53
19	A. I see that.	17:48:54
20	Q. The next bullet says, "Employees should be	17:48:59
21	notified promptly of the existence of any such	17:49:02
22	event that would lead the requirement" -- "lead to	17:49:04
23	the requirement that all documentation be retained	17:49:07
24	indefinitely."	17:49:10
25	Do you see that?	17:49:12

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

172

1	A. I do.	17:49:12
2	Q. That's your understanding of how a	17:49:13
3	litigation hold works, is that it supersedes	17:49:14
4	otherwise routine destruction and directs	17:49:17
5	employees to retain documents indefinitely until	17:49:19
6	told otherwise?	17:49:22
7	A. I don't know the details of what all a	17:49:23
8	litigation hold entails.	17:49:26
9	Q. Have you ever received one?	17:49:27
10	A. Personally, no.	17:49:30
11	Q. Your whole time at the company, there's	17:49:31
12	never been a litigation hold for you, Richard	17:49:34
13	Fogle, to not delete documents?	17:49:36
14	A. For me, personally, no.	17:49:38
15	Q. Have you ever become aware of subordinates	17:49:39
16	of yours receiving litigation holds?	17:49:43
17	A. Yes.	17:49:45
18	Q. Did you make an effort to understand the	17:49:46
19	scope of the hold or the nature of it?	17:49:48
20	A. I -- when we are told that there's a	17:49:52
21	litigation hold, it's a need to know only, and we	17:49:55
22	don't discuss the details.	17:49:58
23	Q. What is your understanding of an	17:49:59
24	employee's obligation when he or she receives a	17:50:02
25	litigation hold?	17:50:04

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

173

1	A. To follow the policies, and it depends on	17:50:05
2	the employee's role.	17:50:13
3	Q. To not delete documents related to the	17:50:13
4	litigation, right?	17:50:17
5	A. If that is -- yes, if that's the	17:50:17
6	employee's role.	17:50:19
7	Q. The last bullet here says, "Any employee	17:50:20
8	found to have violated this policy may be subject	17:50:22
9	to disciplinary action, up to and including	17:50:25
10	termination of employment."	17:50:28
11	Do you see that?	17:50:29
12	A. I do.	17:50:30
13	Q. And you understood that that was the case	17:50:30
14	underneath this policy, right?	17:50:33
15	A. I've not seen this policy until now.	17:50:34
16	Q. Did you understand from two thousand --	17:50:37
17	strike that.	17:50:41
18	When did you join the company?	17:50:41
19	A. I would like to say 2006.	17:50:43
20	Q. From 2006 until the merger with RCN, did	17:50:48
21	you understand that a violation of the record	17:50:50
22	retention policy could subject you to disciplinary	17:50:53
23	action, up to and including termination?	17:50:55
24	A. I've not seen this policy.	17:50:57
25	Q. That's not what I asked you, sir. From	17:50:59

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

174

1 2006 until the merger with RCN, did you understand 17:51:01  
2 that a violation of the record retention policy 17:51:04  
3 could subject you to disciplinary action, up to 17:51:07  
4 and including termination? 17:51:10

5 A. That would be a no. 17:51:11

6 Q. You didn't realize that? 17:51:12

7 A. I did not realize that. 17:51:13

8 MR. O'BEIRNE: Let's take a quick 17:51:15  
9 five-minute bathroom break and then try to charge 17:51:17  
10 on. 17:51:19

11 MR. HOWENSTINE: Okay. 17:51:20

12 THE VIDEOGRAPHER: We're going off the 17:51:22  
13 record at 1751. 17:51:24

14 (Recess taken from 5:51 p.m. to 5:59 p.m.) 17:51:27

15 THE VIDEOGRAPHER: We are going back on 17:59:09  
16 the record at 1759. 17:59:12

17 BY MR. O'BEIRNE: 17:59:15

18 Q. Sir, we've been reviewing Grande's 17:59:16  
19 document retention policy from before the merger. 17:59:19  
20 Do you remember that? 17:59:23

21 A. Yes. 17:59:24

22 Q. Would you look with me again on page 6 -- 17:59:24

23 A. Yes. 17:59:27

24 Q. -- what the policy directs. We've seen 17:59:27  
25 this, but I just want to return and ask you some 17:59:31

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

175

1	questions about it. It states, "Document	17:59:33
2	destruction should be ceased at the first	17:59:36
3	notification of a lawsuit" --	17:59:38
4	A. Yes.	17:59:40
5	Q. -- "anticipation of suit" -- right?	17:59:40
6	A. Yes.	17:59:42
7	Q. -- "or any indication of impropriety"?	17:59:43
8	A. Yes.	17:59:46
9	Q. You would agree with me, then, I take it,	17:59:46
10	that if a Grande employee knowingly destroyed	17:59:49
11	documents after the anticipation of a lawsuit,	17:59:52
12	that would be wrong?	17:59:55
13	A. That would be in violation of the policy.	17:59:57
14	Q. And wrong?	17:59:59
15	A. Yes.	18:00:00
16	Q. All right. And if a Grande employee	18:00:01
17	purposefully destroyed documents after an	18:00:03
18	indication of impropriety that that employee was	18:00:05
19	aware of, that would be wrong?	18:00:09
20	MR. HOWENSTINE: Objection, vague, calls	18:00:10
21	for speculation.	18:00:12
22	A. I could not define -- if impropriety was	18:00:14
23	defined and agreed upon, then, yes. Yes.	18:00:18
24	BY MR. O'BEIRNE:	18:00:21
25	Q. It would be wrong for an employee to be	18:00:22

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

176

1	aware of incriminating documents that indicated	18:00:24
2	that Grande had engaged in impropriety and then	18:00:26
3	delete those on purpose so that they couldn't be	18:00:29
4	found?	18:00:32
5	MR. HOWENSTINE: Same objections.	18:00:32
6	BY MR. O'BEIRNE:	18:00:33
7	Q. That would be wrong, right?	18:00:33
8	A. If that was proven, that would be against	18:00:35
9	this policy and wrong.	18:00:37
10	Q. And wrong?	18:00:39
11	A. Yes.	18:00:40
12	Q. All right. Could get you fired, based on	18:00:47
13	the bottom?	18:00:50
14	A. Yes.	18:00:50
15	Q. So you suggested to Mr. Davis at RCN that	18:01:00
16	Grande destroy incriminating documents regarding	18:01:04
17	DMCA and copyright infringement, didn't you, sir?	18:01:10
18	A. I would have to refresh my memory.	18:01:13
19	Q. You're not able, sitting here today, to	18:01:16
20	testify whether or not you discussed with	18:01:18
21	Mr. Davis purposefully destroying incriminating	18:01:22
22	documents regarding Grande's misconduct under the	18:01:26
23	DMCA?	18:01:29
24	A. No.	18:01:29
25	Q. It's possible you did that?	18:01:30



Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

177

1	A. Anything's possible, yes.	18:01:34
2	Q. Okay. You were concerned that Grande	18:01:43
3	would get nailed based on evidence contained in	18:01:44
4	Grande's e-mails regarding its handling of DMCA	18:01:48
5	allegations, right?	18:01:51
6	A. I would need to refresh my memory.	18:01:54
7	Q. I'm just asking you, sir, do you recall	18:01:57
8	being concerned that Grande would get nailed based	18:01:59
9	on evidence in Grande's own e-mails regarding its	18:02:02
10	handling of DMCA issues?	18:02:05
11	A. I don't recall.	18:02:07
12	Q. Would you agree with me that if you did	18:02:10
13	knowingly encourage the deletion of documents	18:02:12
14	because they had an indication of impropriety in	18:02:18
15	them, that that would violate this policy?	18:02:21
16	A. If it was -- if it was agreed upon that	18:02:25
17	that was improper, yes.	18:02:29
18	(Deposition Exhibit 206 marked for	18:02:38
19	identification.)	18:02:45
20	BY MR. O'BEIRNE:	18:02:45
21	Q. I'm handing you what I've just marked as	18:02:46
22	Plaintiffs' Exhibit 206.	18:02:50
23	A. Thank you.	18:02:53
24	Q. This is an e-mail produced by Grande in	18:03:03
25	this case, ending Bates number 310, right, sir?	18:03:05

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

178

1	A. 310, yes.	18:03:09
2	Q. And it's an e-mail that you sent to	18:03:10
3	Mr. Davis at RCN on August 23rd, 2016, right, sir?	18:03:13
4	A. That's correct.	18:03:16
5	Q. That was before the merger was complete,	18:03:17
6	right, sir?	18:03:19
7	A. I do not know when the merger was	18:03:20
8	complete, but I would say it -- possibly, yes.	18:03:22
9	Q. You said to Mr. Davis, "I was thinking	18:03:28
10	that Cox was nailed on DMCA because they had	18:03:30
11	evidence from subpoenaed corporate e-mail/call	18:03:34
12	recordings."	18:03:38
13	Do you see that?	18:03:38
14	A. Yes.	18:03:39
15	Q. "This is making me think on Grande's	18:03:39
16	e-mail retention policy more in liability terms."	18:03:43
17	Do you see that?	18:03:46
18	A. Yes, I do.	18:03:46
19	Q. So you concluded that you knew there were	18:03:48
20	e-mails in Grande's possession that would render	18:03:50
21	Grande liable in the same way that Cox was liable,	18:03:53
22	and you thought Grande should delete those	18:03:56
23	e-mails?	18:03:58
24	A. No. That's not the context of this.	18:03:58
25	Q. That's not the context of this?	18:04:02

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

179

1	A. No.	18:04:03
2	Q. Okay. What is the context of this, sir?	18:04:04
3	A. I believe this conversation was around	18:04:07
4	Bill telling me about some stories that was	18:04:09
5	happening around this realm and I never thought of	18:04:16
6	subpoenaing e-mail. So when we discussed e-mail	18:04:22
7	retention policies -- the context of this was, we	18:04:30
8	were discussing the different companies' e-mail	18:04:38
9	spools and how big they were. Some people had	18:04:43
10	1 gig, 512 megs, other people had 20 gigs. And he	18:04:46
11	was telling me that our lawyers don't like the	18:04:52
12	concept of a 20 gig e-mail box. And I didn't know	18:04:57
13	why, and we discussed that, about how everything	18:05:01
14	is subpoenaable.	18:05:04
15	MR. HOWENSTINE: I'm just going to jump in	18:05:05
16	and note that you shouldn't disclose information	18:05:07
17	that was provided to you from -- that came from	18:05:09
18	attorneys originally, but otherwise --	18:05:13
19	A. THE WITNESS: Okay.	18:05:15
20	MR. HOWENSTINE: -- go on.	18:05:15
21	A. And this was new to me, and I agreed with	18:05:17
22	him that it does sound like e-mail can be viewed	18:05:19
23	in liability terms -- e-mail can be viewed in	18:05:23
24	liability terms.	18:05:26
25		

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

180

1	BY MR. O'BEIRNE:	18:05:27
2	Q. Meaning --	18:05:28
3	A. Before this, I was really looking at	18:05:28
4	e-mail retention as more of a "I need to go get my	18:05:30
5	e-mail from two years ago to get that vendor	18:05:32
6	name."	18:05:35
7	Q. In your discussion with Mr. Davis about	18:05:36
8	the fact that incriminating e-mails in Cox's	18:05:39
9	possession was part of the reason Cox was nailed	18:05:43
10	on DMCA --	18:05:45
11	A. I think it's --	18:05:45
12	Q. I'm sorry, sir. Let me finish the	18:05:50
13	question, please.	18:05:51
14	A. I didn't know.	18:05:52
15	Q. I'll start it again.	18:05:53
16	Your thought that incriminating evidence	18:05:55
17	from corporate e-mails in Cox's possession helped	18:05:59
18	lead to them getting nailed on the DMCA meant that	18:06:03
19	Grande should consider deleting from its records	18:06:06
20	e-mails that would give rise to Grande liability,	18:06:11
21	right?	18:06:14
22	A. No.	18:06:16
23	Q. What possible reason would describing	18:06:18
24	Grande getting -- strike that.	18:06:21
25	What reason would you have to talk about	18:06:22

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

181

1 Cox getting nailed for having incriminating  
2 e-mails in their records in the context of  
3 Grande's e-mail retention policy?

18:06:24

18:06:28

18:06:31

4 A. Because he told me a story where Cox had  
5 problems in court because someone found an e-mail  
6 that said, "Don't delete this customer, we want to  
7 keep everyone regardless of what they do." And I  
8 was like, wow, I never thought of that before and  
9 that's what led to this e-mail, is I thought about  
10 it and I responded saying, "Yeah, this is making  
11 me think."

18:06:33

18:06:39

18:06:42

18:06:45

18:06:49

18:06:53

18:06:57

18:06:59

12 Q. Making me think we should delete our  
13 e-mails because there would be incriminating  
14 evidence in there?

18:07:00

18:07:02

18:07:04

15 MR. HOWENSTINE: Objection,  
16 mischaracterizes the testimony.

18:07:05

18:07:08

17 A. No, that's not it.

18:07:08

18 BY MR. O'BEIRNE:

18:07:10

19 Q. Sir, you just testified that you were  
20 aware that Cox had been found liable in part based  
21 on incriminating e-mails in Cox's possession,  
22 right?

18:07:10

18:07:12

18:07:14

18:07:17

23 A. On a high level. More of a story, yes.

18:07:17

24 Q. Okay. And you were concerned that there  
25 might be equally incriminating e-mails in Grande's

18:07:20

18:07:22

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

182

1 system and that's why you wanted to discuss the 18:07:24  
2 retention policy in terms of what liability would 18:07:27  
3 be evidenced by the documents in Grande's system, 18:07:29  
4 right? 18:07:31

5 A. No. I've just never thought of e-mails as 18:07:31  
6 a liability before. 18:07:35

7 Q. What do you mean by "liability"? How 18:07:39  
8 could it be a liability, sir, to maintain relevant 18:07:41  
9 records probative of somebody's legal claims? 18:07:44

10 MR. HOWENSTINE: Objection, 18:07:46  
11 mischaracterizes the testimony. 18:07:47

12 A. By "liability," I never -- when he told me 18:07:51  
13 that story, I was simply surprised. And I think 18:07:57  
14 what he was trying to convey to me is you should 18:08:02  
15 be careful of what you say in e-mail and how you 18:08:07  
16 word it, not that -- or you need to go on a 18:08:10  
17 destructive spree. 18:08:15

18 BY MR. O'BEIRNE: 18:08:16

19 Q. Did you say in this e-mail, "Thanks, Bill, 18:08:17  
20 for the advice to be careful what I say in 18:08:19  
21 e-mail"? 18:08:22

22 MR. HOWENSTINE: Objection, argumentative. 18:08:24

23 A. I don't recall. This is more confirmation 18:08:27  
24 that his story and what he said, I learned from 18:08:30  
25 it. 18:08:35

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

183

1	BY MR. O'BEIRNE:	18:08:38
2	Q. We'll see. But before we looked at this,	18:08:38
3	I asked you whether you had ever discussed	18:08:41
4	purposefully deleting e-mails to remove evidence	18:08:43
5	that would render Grande liable. Do you recall	18:08:46
6	that?	18:08:49
7	A. Yes.	18:08:49
8	Q. Now, what did you mean by "liability"?	18:08:50
9	Liability to whom for what?	18:08:55
10	MR. HOWENSTINE: Objection, asked and	18:08:57
11	answered.	18:08:58
12	BY MR. O'BEIRNE:	18:08:59
13	Q. Go ahead.	18:09:00
14	A. A liability as in there's more to keeping	18:09:01
15	large e-mail spools than just the simple annoyance	18:09:04
16	our IT techs have with someone who can't use	18:09:08
17	Outlook because they have 5 million e-mails and	18:09:11
18	they put in support tickets.	18:09:14
19	Q. Right. What more than the simple	18:09:15
20	annoyance? What about liability in excess to the	18:09:17
21	annoyance did you mean?	18:09:20
22	A. That there's other reasons that we could	18:09:21
23	say, other than I really wish you wouldn't keep	18:09:24
24	all that e-mail.	18:09:28
25	Q. And one of the reasons is we're afraid	18:09:29

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

184

1	there's going to be bad e-mails in there that	18:09:31
2	could render us liable to somebody in a lawsuit,	18:09:33
3	right, sir?	18:09:36
4	MR. HOWENSTINE: Objection,	18:09:37
5	mischaracterizes the testimony.	18:09:37
6	A. That's not true.	18:09:39
7	BY MR. O'BEIRNE:	18:09:40
8	Q. Who did you envision would be liable when	18:09:40
9	you used the term "liability"?	18:09:42
10	A. No one in particular.	18:09:46
11	Q. No one in particular. You're reaching out	18:09:49
12	to Mr. Davis at RCN in your official role at	18:09:52
13	Grande to discuss the liability of nobody in	18:09:55
14	particular?	18:09:57
15	A. No. I was just confirming the story he	18:10:00
16	told me and I told him what I learned from it.	18:10:04
17	Q. He told you a story that Cox was nailed on	18:10:06
18	the DMCA because they had incriminating evidence	18:10:10
19	from subpoenaed corporate e-mails?	18:10:12
20	A. That they literally had an e-mail that	18:10:14
21	said, "Don't delete these customers because we	18:10:16
22	wanted to keep them regardless."	18:10:19
23	Q. Well, you guys weren't deleting any	18:10:20
24	customers because you wanted to keep them	18:10:23
25	regardless, right?	18:10:24



Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

185

1	MR. HOWENSTINE: Objection, lacks	18:10:25
2	foundation, argumentative.	18:10:26
3	A. I wouldn't know.	18:10:27
4	BY MR. O'BEIRNE:	18:10:28
5	Q. When did you discuss what happened in the	18:10:29
6	Cox case with Mr. Davis?	18:10:30
7	A. It was in a passing phone call.	18:10:32
8	Q. Okay. So after that phone call, you sat	18:10:35
9	down and wrote this e-mail, right?	18:10:37
10	A. If you look at it, it says 8:55 p.m. at	18:10:39
11	night. So I thought about it and if someone	18:10:43
12	teaches me something or has a good point, I	18:10:45
13	normally follow up and say, you know, thank you.	18:10:50
14	Q. Okay. You state, "This is making me think	18:10:56
15	on Grande's e-mail retention policy in more	18:10:58
16	liability terms."	18:11:04
17	What were you concerned Grande would be	18:11:05
18	found liable for if it retained e-mails?	18:11:07
19	A. It's a -- it's not -- it made me think in	18:11:09
20	terms of legal liabilities, not just in terms of	18:11:13
21	mailbox size and the strain it has on our system	18:11:18
22	resources.	18:11:22
23	Q. What legal liabilities? Legal liability	18:11:23
24	of whom to whom?	18:11:25
25	A. Nothing in particular.	18:11:28

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

186

1	Q. Nothing in particular in an e-mail when	18:11:29
2	you talk about Cox getting nailed on the DMCA?	18:11:32
3	A. Nothing in particular.	18:11:36
4	Q. Your sworn testimony is that you meant	18:11:37
5	nothing in particular in discussing this liability	18:11:40
6	in this e-mail?	18:11:42
7	MR. HOWENSTINE: Objection, asked and	18:11:42
8	answered, argumentative.	18:11:44
9	A. I -- that is my testimony.	18:11:45
10	BY MR. O'BEIRNE:	18:11:47
11	Q. So what you were saying in this e-mail --	18:11:47
12	strike that.	18:11:50
13	Isn't it true that at this time in	18:11:50
14	August 2016, you were concerned that Grande would	18:11:53
15	get nailed on the DMCA based on evidence in its	18:11:56
16	corporate e-mail?	18:12:00
17	MR. HOWENSTINE: Objection, asked and	18:12:01
18	answered, argumentative.	18:12:02
19	A. No.	18:12:03
20	MR. HOWENSTINE: Phil, you can only answer	18:12:04
21	this -- ask the same question a certain number of	18:12:07
22	times.	18:12:09
23	MR. O'BEIRNE: It's a totally different	18:12:09
24	and unique question. I'll ask it again. And your	18:12:11
25	objection's noted for the record. That's fine.	18:12:14

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

187

1	You made your objection.	18:12:16
2	BY MR. O'BEIRNE:	18:12:18
3	Q. Sir, isn't it true that at this time in	18:12:18
4	August 2016, you were concerned that Grande would	18:12:20
5	get nailed on the DMCA based on evidence in	18:12:22
6	Grande's corporate e-mail?	18:12:27
7	A. No.	18:12:29
8	Q. No?	18:12:29
9	A. No.	18:12:30
10	Q. Okay. What's the PX number on that one?	18:12:30
11	A. It is 206.	18:12:36
12	Q. Thank you, sir.	18:12:37
13	(Deposition Exhibit 207 marked for	18:12:39
14	identification.)	18:12:40
15	BY MR. O'BEIRNE:	18:12:40
16	Q. Let's look at PX207.	18:12:40
17	A. Thank you.	18:12:54
18	Q. I'm handing you what I've just marked as	18:12:54
19	PX207. This is an e-mail produced by Grande in	18:12:57
20	this case at Bates number 2342, right, sir?	18:13:01
21	A. Yes.	18:13:04
22	Q. It's an e-mail you sent to Paul Morgan on	18:13:05
23	September 30th, 2016, right?	18:13:09
24	A. Yes.	18:13:11
25	Q. And that's about a month or more after the	18:13:12

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

188

1	exchange with Mr. Davis in PX206, right?	18:13:18
2	A. That is correct.	18:13:21
3	Q. Who's Mr. Morgan?	18:13:21
4	A. He is an enterprise sales rep who refuses	18:13:24
5	to delete any e-mail.	18:13:27
6	Q. Refuses to?	18:13:28
7	A. Delete e-mail or clean up his e-mail box.	18:13:29
8	Q. Okay. And you sent him an e-mail,	18:13:32
9	subject, "Reason for e-mail retention	18:13:34
10	enforcement," right?	18:13:37
11	A. Uh-huh.	18:13:37
12	Q. Yes?	18:13:38
13	A. Yes, I did.	18:13:38
14	Q. You were following up with him because he	18:13:40
15	wasn't deleting e-mails, right?	18:13:42
16	A. This is correct.	18:13:43
17	Q. And in an e-mail in which you were	18:13:44
18	following up with him because he wasn't deleting	18:13:45
19	e-mails, you noted that your following up was not	18:13:48
20	based on RCN's direction to follow up with him,	18:13:53
21	right?	18:13:56
22	A. No. This was purely internal at Grande.	18:13:57
23	He was not deleting e-mails and our e-mail	18:14:00
24	archiver was reaching its max and it was about to	18:14:03
25	tip over and we needed to clean up.	18:14:06

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

189

1	Q. So what you told him is, "RCN isn't the	18:14:09
2	reason this came to a head recently"?	18:14:12
3	A. Yes.	18:14:14
4	Q. By that you mean, reasons to delete	18:14:15
5	e-mails?	18:14:17
6	A. Yes. Paul -- I was going back and	18:14:18
7	forth -- my IT manager Bobby was going back and	18:14:21
8	forth with Paul about not cleaning up and he gave	18:14:24
9	it to me and Paul immediately said, "You're doing	18:14:26
10	this because RCN does it."	18:14:31
11	Q. Right.	18:14:32
12	A. And I said no.	18:14:33
13	Q. So you're saying, "Let me tell you why I'm	18:14:34
14	telling you to clean up your e-mails"?	18:14:36
15	A. Yes.	18:14:38
16	Q. And you sent him three separate links to	18:14:39
17	articles about the Cox verdict, right?	18:14:42
18	A. No. There's four links there.	18:14:45
19	Q. Thank you. I'm sorry, I'll say that	18:14:47
20	again.	18:14:50
21	A. Okay.	18:14:50
22	Q. You sent him four separate articles about	18:14:51
23	the Cox verdict as the reason why you were telling	18:14:53
24	him to delete e-mails?	18:14:56
25	A. Yes.	18:14:58

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

190

1	Q. This is more than a month after your	18:15:03
2	discussion with Mr. Davis in which you said, "I'm	18:15:05
3	viewing our e-mail retention in terms of	18:15:09
4	liability," right, sir?	18:15:13
5	A. Yes.	18:15:14
6	Q. All right. And the liability you were	18:15:14
7	viewing it in terms of was Grande being found	18:15:17
8	liable in the same way that Cox was for the same	18:15:20
9	claims based on what was in Grande's e-mails,	18:15:22
10	right?	18:15:25
11	A. No.	18:15:25
12	Q. No?	18:15:26
13	A. No. The liability was something added on,	18:15:27
14	where if you read the next paragraph, "plus our	18:15:30
15	message archiver is standing on its last legs due	18:15:33
16	to overcapacity."	18:15:37
17	I don't have 30,000 to go buy a new	18:15:38
18	appliance, and our policy has always stated	18:15:41
19	seven years. We were just lax in enforcing it.	18:15:43
20	Q. That is true, there's a message archiver	18:15:46
21	paragraph.	18:15:50
22	A. Yes.	18:15:50
23	Q. Please read for me the next sentence in	18:15:50
24	the e-mail.	18:15:51
25	A. "The key to Rightscorp winning the	18:15:51

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

191

1	judgment" --	18:15:54
2	THE REPORTER: Slowly.	18:15:54
3	A. "The key to Rightscorp winning the	18:15:55
4	judgment is Cox kept e-mail that was subpoenaed	18:15:58
5	showing that they told support staff not to kick	18:16:00
6	out DMCA offenders, thus placing the safe harbor	18:16:03
7	in jeopardy."	18:16:08
8	BY MR. O'BEIRNE:	18:16:09
9	Q. And you knew that Grande had e-mails in	18:16:09
10	its records that would place Grande's safe harbor	18:16:11
11	in jeopardy and that's why you wanted them	18:16:14
12	deleted, right, sir?	18:16:16
13	A. No.	18:16:17
14	MR. HOWENSTINE: Objection, lacks	18:16:17
15	foundation.	18:16:19
16	A. That's not true.	18:16:19
17	BY MR. O'BEIRNE:	18:16:23
18	Q. Okay. Did you send him four price quotes	18:16:23
19	for an additional message archiver?	18:16:26
20	A. To Paul?	18:16:28
21	Q. In your e-mail to Paul, did you send him	18:16:30
22	four examples of how expensive it would be to	18:16:32
23	create more storage space for his e-mails?	18:16:35
24	A. I sent him four links that I got from	18:16:39
25	Google to try to convince him to comply without	18:16:43

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

192

1 fighting too much and I said 30,000. I don't

18:16:47

2 recall sending him quotes. I'm not sure why he

18:16:50

3 would want to see those.

18:16:53

4 Q. The links in Google that you sent him were

18:16:54

5 to show him that Grande should delete e-mails in

18:16:57

6 an attempt to avoid the same kind of liability

18:17:00

7 that Cox was found for in the Virginia case,

18:17:02

8 right, sir?

18:17:05

9 A. No. It said that our policy has always

18:17:06

10 stated seven years and we were just lax in

18:17:09

11 enforcing it. We are enforcing it to be in

18:17:11

12 compliance with our policy and by the way, here

18:17:14

13 are some other reasons. My IT manager said that

18:17:16

14 we need to comply with our policy and it's on its

18:17:18

15 last legs. I spoke to Bill Davis about that. He

18:17:21

16 told me the story and I used his story to try to

18:17:24

17 tell Paul that there are other reasons why we want

18:17:28

18 to comply with our policy.

18:17:31

19 Q. Did you anticipate -- strike that.

18:17:33

20 You knew at this time that Rightscorp had

18:17:36

21 sent hundreds of thousands of notices of

18:17:38

22 infringement to Grande, right?

18:17:41

23 MR. HOWENSTINE: Objection, lacks

18:17:43

24 foundation.

18:17:44

25 A. Not to my knowledge.

18:17:45



Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

193

1	BY MR. O'BEIRNE:	18:17:46
2	Q. No? Let's go back to the e-mail we looked	18:17:46
3	at --	18:17:51
4	A. Sure.	18:17:52
5	Q. -- previously.	18:17:51
6	A. Is that 206?	18:17:52
7	Q. No, the one before that, where Lars	18:17:53
8	generated a report of notices received by Grande,	18:17:56
9	please, sir.	18:17:59
10	A. Okay.	18:18:02
11	Q. What's the date on that?	18:18:03
12	A. That is 107 and that is February 22nd,	18:18:04
13	2016.	18:18:07
14	Q. So that is seven months before this	18:18:07
15	e-mail, right?	18:18:09
16	A. Yes.	18:18:10
17	Q. And you're CC'd on an e-mail that states	18:18:11
18	that Grande received how many notices from	18:18:15
19	Rightscorp in 2015?	18:18:17
20	A. The e-mail says 246 and 120, from	18:18:18
21	DigitalRightsCorp.com.	18:18:23
22	Q. That's 246,000, right?	18:18:24
23	A. Quarter mill.	18:18:26
24	Q. So you were aware that Grande had received	18:18:27
25	at least a quarter million notices from Rightscorp	18:18:30

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

194

1	as of February 2016, right?	18:18:32
2	A. I did not read this e-mail.	18:18:34
3	Q. How do you know you didn't read the	18:18:37
4	e-mail?	18:18:39
5	A. Because Lars told me that it was good and	18:18:39
6	he was CCing me, just to get back with him	18:18:41
7	tomorrow.	18:18:44
8	Q. You received an e-mail in February 2016,	18:18:45
9	right?	18:18:47
10	A. February 22nd, 2016, from Lars to Lamar,	18:18:47
11	CCing me, yes.	18:18:52
12	Q. You received that e-mail in February 2016,	18:18:53
13	right?	18:18:56
14	A. Yes.	18:18:56
15	Q. And that e-mail contained information that	18:18:57
16	Rightscorp had sent at least 246,000 notices of	18:19:00
17	infringement to Grande in 2015, right?	18:19:04
18	A. Assuming DigitalRightsCorp.com was the	18:19:07
19	source that they were using in DMCA and these	18:19:12
20	were -- assuming those things, then yes.	18:19:18
21	Q. Yeah. And then seven months later you	18:19:20
22	wrote in an e-mail to Mr. Morgan, "The key to	18:19:22
23	Rightscorp winning the judgment is Cox kept	18:19:25
24	e-mail," right?	18:19:29
25	A. No. No.	18:19:33

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

195

1	Q. Your --	18:19:36
2	A. Cox -- are you talking about 206?	18:19:37
3	Q. 207.	18:19:39
4	A. From William -- or to William Davis from	18:19:40
5	me --	18:19:43
6	Q. No, 207.	18:19:43
7	A. 207.	18:19:44
8	Q. Seven months after you received the e-mail	18:19:46
9	246,000 Rightscorp notices, you wrote Mr. Morgan	18:19:52
10	that the key to Rightscorp winning the judgment is	18:19:54
11	Cox kept e-mail. Do you see that?	18:19:58
12	A. Yes.	18:20:04
13	Q. And this was in an e-mail trying to	18:20:05
14	encourage Mr. Morgan to delete e-mails?	18:20:07
15	MR. HOWENSTINE: Objection, asked and	18:20:10
16	answered.	18:20:11
17	BY MR. O'BEIRNE:	18:20:11
18	Q. Right?	18:20:11
19	A. This was to encourage him to clean up his	18:20:12
20	act, yes.	18:20:15
21	Q. And by "clean up his act," you mean delete	18:20:15
22	e-mails?	18:20:18
23	A. To be in compliance with our policy and to	18:20:18
24	stop complaining because we need to cut off the	18:20:21
25	seven year.	18:20:24

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

196

1	Q. To clean up his act, you mean delete	18:20:25
2	e-mails, right?	18:20:27
3	A. To be in compliance with our seven year	18:20:28
4	and he was -- after this e-mail, he still didn't	18:20:30
5	listen to me.	18:20:32
6	Q. So you would agree with me you're	18:20:32
7	directing him to delete e-mails here?	18:20:35
8	A. No. I told him that he needs to comply	18:20:36
9	with the seven years and stop escalating and be	18:20:39
10	okay with us removing e-mails past seven years as	18:20:45
11	per our policy that we were lax in enforcing.	18:20:48
12	Q. By removing e-mails past seven years, you	18:20:51
13	mean they're deleted and gone?	18:20:54
14	A. Yeah. We have to.	18:20:55
15	Q. So this is encouraging him to allow the	18:20:56
16	deletion of his e-mails?	18:20:59
17	MR. HOWENSTINE: Objection, asked and	18:20:59
18	answered.	18:21:00
19	A. This is encouraging him to go along with	18:21:02
20	it without continuing to escalate and complain and	18:21:06
21	have meetings, yes.	18:21:10
22	BY MR. O'BEIRNE:	18:21:11
23	Q. You go on to say, "I'm not trying to slow	18:21:11
24	you down or trip you up, just have to balance	18:21:14
25	regulatory, liability and budgetary factors,"	18:21:16

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

197

1	right?	18:21:20
2	A. Yes.	18:21:20
3	Q. And the liability factor you're trying to	18:21:21
4	balance there is Grande's liability for DMCA	18:21:24
5	claims, right?	18:21:26
6	MR. HOWENSTINE: Objection, calls for	18:21:28
7	speculation.	18:21:29
8	A. That's -- can you reword that question?	18:21:32
9	BY MR. O'BEIRNE:	18:21:35
10	Q. Sure. I'll ask you a different question.	18:21:36
11	A. Sure.	18:21:37
12	Q. What liability are you talking about here,	18:21:38
13	sir?	18:21:40
14	A. In general.	18:21:40
15	Q. What liability are you talking about?	18:21:40
16	MR. HOWENSTINE: Objection, asked and	18:21:43
17	answered.	18:21:45
18	A. In general.	18:21:45
19	BY MR. O'BEIRNE:	18:21:45
20	Q. I don't understand what "in general"	18:21:46
21	means. Liability of whom to whom?	18:21:48
22	A. There's no direct liability. What is the	18:21:50
23	cost of keeping e-mail past our retention	18:21:53
24	policy --	18:21:56
25	Q. Okay.	18:21:58

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

198

1	A. -- and having endless amounts of e-mail	18:21:59
2	can create liabilities. It could also cost money.	18:22:02
3	It could also bring our systems to its knees.	18:22:05
4	Q. Create liabilities for whom, sir?	18:22:08
5	MR. HOWENSTINE: Objection, asked and	18:22:10
6	answered.	18:22:11
7	A. Liabilities in general.	18:22:13
8	BY MR. O'BEIRNE:	18:22:15
9	Q. You said "could create liabilities." The	18:22:15
10	concept of liabilities is that someone is liable,	18:22:17
11	right?	18:22:21
12	A. I'm not a lawyer. I was just trying to	18:22:21
13	scare a sales rep into complying.	18:22:24
14	Q. By saying, "We're going to lose a lawsuit	18:22:26
15	if you don't delete your e-mails"?	18:22:29
16	A. No.	18:22:30
17	Q. Were you concerned about some other	18:22:31
18	company's liability in this e-mail?	18:22:33
19	A. I was just saying liability in general.	18:22:35
20	Q. Did you mean Google's liability?	18:22:38
21	A. I was saying in general.	18:22:40
22	MR. HOWENSTINE: Objection, argumentative,	18:22:42
23	asked and answered.	18:22:43
24	BY MR. O'BEIRNE:	18:22:44
25	Q. Did you mean Apple's liability?	18:22:44

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

199

1	MR. HOWENSTINE: Objection, argumentative.	18:22:46
2	A. In general.	18:22:48
3	BY MR. O'BEIRNE:	18:22:53
4	Q. Did you -- were you referring to Apple's	18:22:53
5	liability when you wrote this e-mail?	18:22:56
6	MR. HOWENSTINE: Objection, argumentative.	18:22:57
7	A. I was referring to liabilities in general.	18:22:59
8	BY MR. O'BEIRNE:	18:23:01
9	Q. Do you understand the question, were you	18:23:02
10	referring to Apple's liability?	18:23:04
11	MR. HOWENSTINE: Objection, argumentative.	18:23:06
12	It's been answered.	18:23:08
13	BY MR. O'BEIRNE:	18:23:10
14	Q. You don't understand the question?	18:23:10
15	A. I do understand the question.	18:23:11
16	Q. Were you referring to Apple's liability?	18:23:12
17	A. No, I was referring to in general.	18:23:14
18	Q. You were referring to Grande's liability,	18:23:16
19	right, sir?	18:23:18
20	MR. HOWENSTINE: Objection, asked and	18:23:18
21	answered.	18:23:20
22	A. I was referring to in general.	18:23:20
23	BY MR. O'BEIRNE:	18:23:22
24	Q. You were referring to Grande's liability	18:23:22
25	here for copyright infringement, right, sir?	18:23:24

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

200

1	MR. HOWENSTINE: Same objection.	18:23:25
2	A. I was referring to liability in general.	18:23:27
3	BY MR. O'BEIRNE:	18:23:30
4	Q. Your sworn testimony is that this e-mail	18:23:31
5	doesn't reflect your concern that Grande would be	18:23:33
6	found liable in the same way that Cox was unless	18:23:36
7	it deleted e-mails?	18:23:39
8	A. No.	18:23:40
9	Q. That was the reason for the flurry of	18:23:45
10	discussions of Rightscorp notices in February 2016	18:23:48
11	at Grande, wasn't it, sir, because the Cox verdict	18:23:51
12	came down in December 2015?	18:23:54
13	A. I don't know.	18:23:58
14	Q. You don't know that?	18:23:59
15	A. I just had a story that Bill Davis told me	18:24:01
16	when we were talking about managing e-mail and	18:24:03
17	finding money to replace stuff.	18:24:10
18	Q. By "managing," do you mean preserving more	18:24:11
19	or less e-mail?	18:24:14
20	A. First and foremost, we needed to comply	18:24:15
21	with our policy of seven years.	18:24:19
22	Q. A policy you had never read until I showed	18:24:20
23	it to you today?	18:24:23
24	A. Until I inherited it when we reorged.	18:24:24
25	Q. You didn't read it after you inherited it,	18:24:25



Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

201

1	did you?	18:24:27
2	MR. HOWENSTINE: Objection,	18:24:28
3	mischaracterizes the testimony.	18:24:28
4	A. I did not read it right after we reorged	18:24:29
5	and I inherited a problem, and then we started	18:24:32
6	merging with RCN's policies.	18:24:36
7	BY MR. O'BEIRNE:	18:24:39
8	Q. Your testimony is, your e-mails were about	18:24:39
9	your concerns with complying with this policy?	18:24:41
10	A. With our policy, yes.	18:24:44
11	Q. A policy you had never looked at one time	18:24:45
12	prior to today?	18:24:47
13	A. That's correct.	18:24:48
14	Q. So I'm going to ask you to look at PX147,	18:24:50
15	which you have in front of you. It should be in	18:24:58
16	the pile there.	18:25:04
17	A. Here? What is it, 146?	18:25:04
18	Q. 147.	18:25:07
19	A. 147.	18:25:08
20	MR. HOWENSTINE: Phil, I apologize. I	18:25:08
21	need to take a break.	18:25:10
22	MR. O'BEIRNE: Okay. Quick break, yeah,	18:25:12
23	that's fine. That's fine. I'm almost done.	18:25:14
24	THE VIDEOGRAPHER: Please stand by.	18:25:16
25	MR. O'BEIRNE: Yeah, that's fine.	18:25:18

Transcript of Richard N. Fogle, Designated Representative  
Conducted on June 28, 2018

228

## 1 REPORTER'S CERTIFICATION

2 I, Micheal A. Johnson, the officer before  
3 whom the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true  
5 and correct record of the testimony given; that  
6 said testimony was taken by me stenographically  
7 and thereafter reduced to typewriting under my  
8 direction; that reading and signing was requested;  
9 and that I am neither counsel for, related to, nor  
10 employed by any of the parties to this case and  
11 have no interest, financial or otherwise, in its  
12 outcome.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 4th day of July, 2018.

15  
16 

17 \_\_\_\_\_  
18 MICHEAL A. JOHNSON, RDR, CRR  
19 NOTARY PUBLIC IN AND FOR  
20 THE STATE OF TEXAS  
21  
22  
23  
24  
25